

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for June 22, 2005 PLANNING COMMISSION MEETING

P.A.S.: Pre-existing Special Permit #31A

PROPOSAL: To expand the area where the sale of alcoholic beverages for consumption on the premises is allowed for Earl's Tavern.

CONCLUSION: Provided the corrections noted in the recommended conditions for approval are made, this request complies with all applicable criteria for a special permit for the sale of alcohol for consumption on the premises, and is an appropriate land use at this location.

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| <u>RECOMMENDATION:</u> | Conditional Approval |
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GENERAL INFORMATION:

LEGAL DESCRIPTION: See attached ownership certificate.

LOCATION: 5555 Superior Street

EXISTING ZONING: H-3 Highway Commercial, I-1 Industrial

EXISTING LAND USE: Commercial

SURROUNDING LAND USE AND ZONING:

| | | |
|--------|---|-----|
| North: | Commercial | B-1 |
| South: | Commercial | B-1 |
| East: | Superior Street/Cornhusker Hwy intersection | |
| West: | Office | O-2 |

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan designates commercial land uses in this area.

BACKGROUND: This is a request to expand the area where the sale of alcohol is allowed at Earl's Tavern to include an outdoor beer garden. The beer garden is a 12' x 20' addition to the existing building. The sale of alcohol at this location pre-dates 1994 when the Zoning Ordinance was amended to require special permits for on and off-sale alcohol. As an allowed use by special permit in the H-3 and I-1 districts and because it pre-dates 1994, it is considered a pre-existing special permit per Lincoln Municipal Code (LMC) Section

27.63.040. That section requires that any enlargement or expansion be treated in the same manner as a new special permit including a public hearing before the Planning Commission.

As required, this request is reviewed using the conditions provided in LMC 27.63.680 for a special permit for the consumption of alcohol on the premises. The analysis of those conditions is included below.

ANALYSIS:

1. SPECIAL PERMIT REQUIREMENTS PER LINCOLN MUNICIPAL CODE (LMC)

27.63.680: Alcoholic beverages may be sold for consumption on the premises in the B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2 and I-3 zoning districts upon the approval of a special permit. Alcoholic beverages may also be sold for consumption on the premises as an accessory use to a golf course or country club as part of a separate special permit under Section 27.63.130 approving the golf course or country club in any district where recreational facilities are allowed as a permitted use, permitted conditional use, or permitted special use. A special permit for such use may be granted subject to the requirements of the respective districts, all applicable ordinances, and the following conditions:

(a) Parking shall be provided on-site at the ratio of one space per 100 square feet of gross floor area.

Off-street parking must be provided at the ratio of one space per 100 square feet of floor area. While the use is pre-existing, LMC states that any amendment be in compliance with all applicable requirements. Off-street parking is not shown on the site plan, and Public Works and Utilities notes in their review that the existing parking lot surfacing and layout does not meet design standards. The site plan must be revised to show all required parking at the stated ratio based upon floor area, including the proposed beer garden, to the satisfaction of Public Works and Utilities.

(b) The sale of alcoholic beverages for consumption off the premises shall not be permitted without issuance of a permit under LMC Section 27.63.685 of this code.

This application is for a special permit to expand only the area where the sale of alcohol for consumption on the premises is allowed. An expansion of the sale of alcoholic beverages off the premises is not a part of this proposal and is not being requested.

(c) The designated area specified in a license issued under the Nebraska Liquor Control Act of any building approved for such activity must be located no closer than 100 feet from a day care facility, park, church, state mental

health institution, or a residential district (except where such use is accessory to a golf course or country club).

This use is more than 100' from a day care facility, park, church, state mental health institution, or a residential district. The nearest of any of these is the R-4 district located approximately 500' away to the southeast of the site across Cornhusker Highway and the BN/Sante Fe railroad.

(d) Any lighting on the property shall be designed and erected in accordance with all applicable lighting regulations and requirements.

No additional lighting is shown as part of the proposed expansion, however all new lighting associated with this request will be required to comply with the City of Lincoln Design Standards and will be reviewed at the time of Building Permits.

(e) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

A drive-through window is not shown as part of this application.

(f) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.

No such devices are shown as part of this application.

(g) No access door to the business, including loading or unloading doors, shall face any residential district if such doors are within 150 feet of the residential district. This shall not apply to emergency exit doors required by building or safety codes. No door facing a residential district shall be kept open during the operation of the establishment.

There is no potential for access doors being located within 150' of a residential district, as noted previously the nearest residential district is in excess of 500' away from the site.

(h) Vehicular ingress and egress to and from the property shall be designed to avoid, to the fullest extent possible as determined by the City Council,

disruption of any residential district. Particular attention shall be given to avoiding designs that encourage use of residential streets for access to the site instead of major streets.

Access to the premises is from Superior Street which is not considered a "residential street" at this location.

(i) All other regulatory requirements for liquor sales shall apply, including licensing by the state.

(j) The City Council may consider any of the following as cause to revoke the special permit approved under these regulations:

(1) Revocation or cancellation of the liquor license for the specially permitted premises; or

(2) Repeated violations related to the operation of the permittee's business.

(3) Repeated or continuing failure to take reasonable steps to prevent unreasonable disturbances and anti-social behavior on the premises related to the operation of the permittee's business including, but not limited to, violence on site, drunkenness, vandalism, solicitation, or litter.

Planning Commission approval is required for this use.

2. DEPARTMENT RESPONSES:

POLICE: The Police Department had no objection to this request.

PUBLIC WORKS: Public Works and Utilities noted that the parking lot surfacing and layout does not meet design standards.

HEALTH: As an advisory note, the Health Department recommends that at least 20% of the area of the total square footage of the walls and ceiling be open to ensure adequate ventilation.

CONDITIONS:

Site Specific:

1. This approval permits the expansion of the area designated for the sale of alcohol for consumption on the premises as shown on the site plan.

General:

2. Before receiving building permits:

2.1 The permittee shall complete the following instructions and submit the documents and plans to the Planning Department for review and approval.

2.1.1.1 Submit six copies of a revised site plan showing a parking plan including floor area/parking space calculations approved by Public Works and Utilities.

2.2 The construction plans comply with the approved plans.

Standard:

3. The following conditions are applicable to all requests:

3.1 Before the sale of alcohol for consumption on the premises, all development and construction is to comply with the approved plans.

3.2 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.

3.3 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.

3.4 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the applicant.

Prepared by:

Brian Will, AICP, 441-6362, bwill@lincoln.ne.gov
Planner
June 9, 2005

**OWNER/
CONTACT:**

Earl Allen
5725 Aylesworth
Lincoln, NE 68505
(402) 466-4070

APPLICANT:

Allen Enterprises
5555 Superior Street
Lincoln, NE 68507
(402) 466-3882

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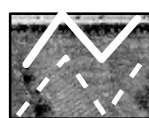
2002 aerial

Pre-Existing Special Permit #31A N. 56th & Superior St.

Zoning:

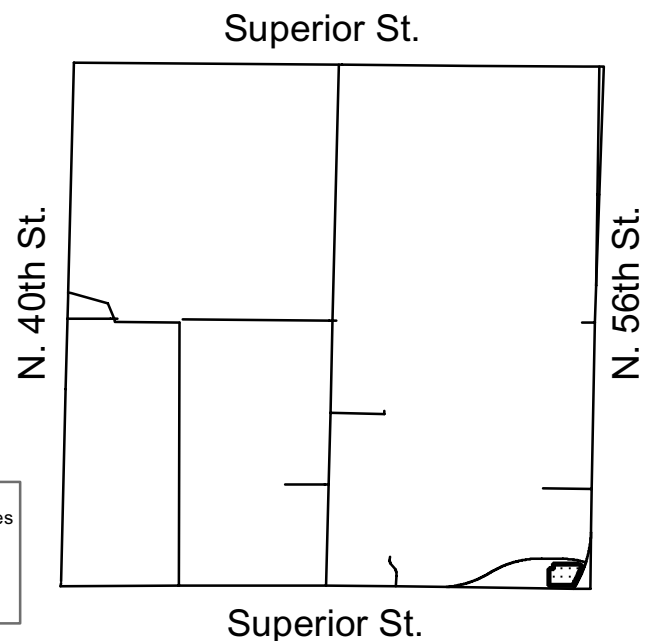
| | |
|------------|--|
| R-1 to R-8 | Residential District |
| AG | Agricultural District |
| AGR | Agricultural Residential District |
| R-C | Residential Conservation District |
| O-1 | Office District |
| O-2 | Suburban Office District |
| O-3 | Office Park District |
| R-T | Residential Transition District |
| B-1 | Local Business District |
| B-2 | Planned Neighborhood Business District |
| B-3 | Commercial District |
| B-4 | Lincoln Center Business District |
| B-5 | Planned Regional Business District |
| H-1 | Interstate Commercial District |
| H-2 | Highway Business District |
| H-3 | Highway Commercial District |
| H-4 | General Commercial District |
| I-1 | Industrial District |
| I-2 | Industrial Park District |
| I-3 | Employment Center District |
| P | Public Use District |

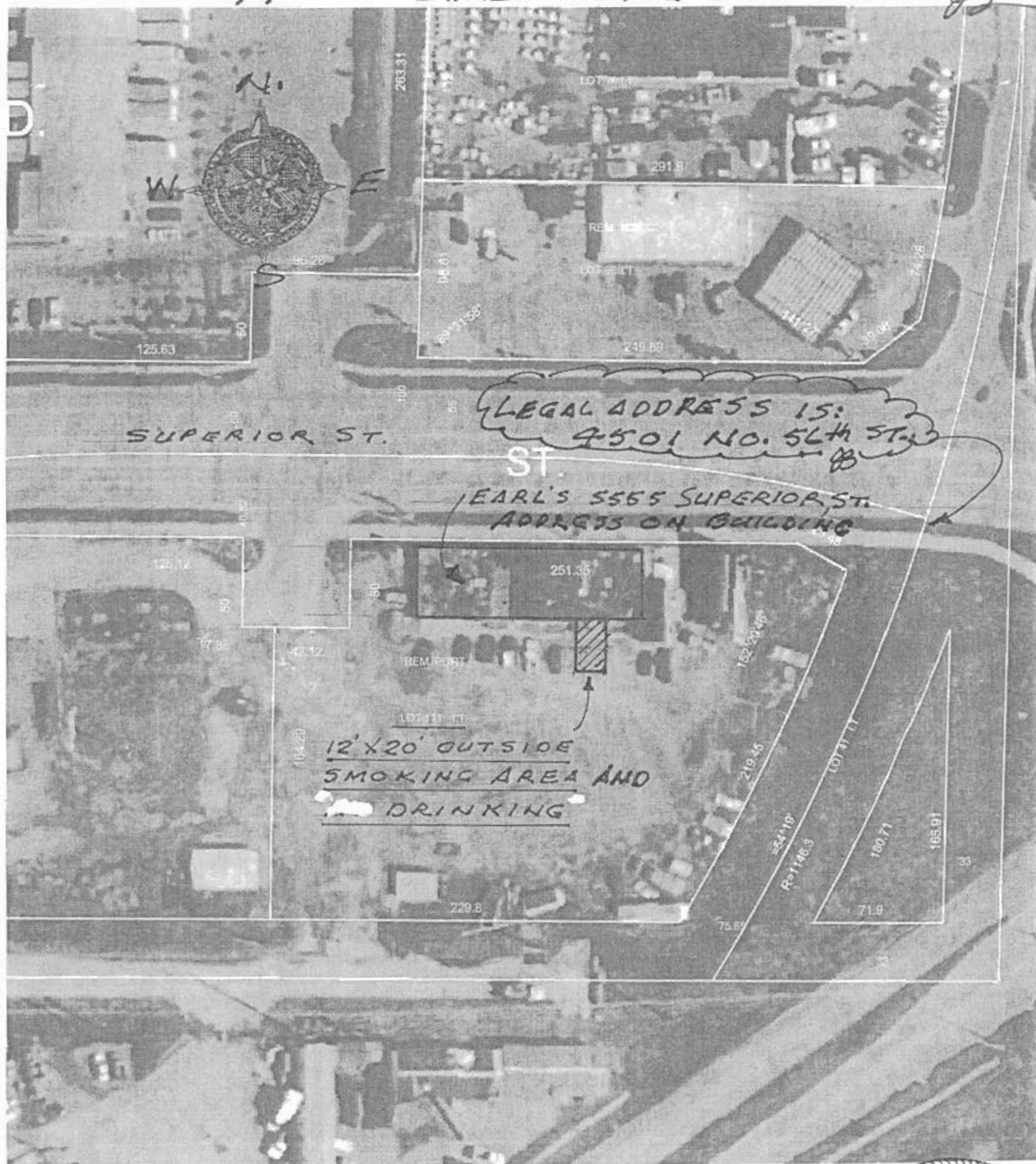
One Square Mile
Sec. 5 T10N R70E



Zoning Jurisdiction Lines

City Limit Jurisdiction



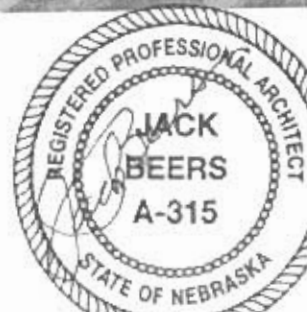


EARL'S TAVERN IT LOT-III
LINCOLN, NE. 68507

SITE PLAN 3-8-05
REC. FROM CITY OF LINCOLN
SHEET 1 OF 3

JACK BEERS
ARCHITECT / ENGINEER
COMPLETE PROFESSIONAL SERVICES
2335 WESTLER BOULEVARD
LINCOLN, NEBRASKA 68502-5812
(402) 423-8896 CELL 580-0277

0-0500537
PERMIT NO.



~~To: [unclear]~~

This is written permission from,
Earl & Lella To Allen Enterprises ^{PO} DBA Eack
Thank you for this Beer Garden. ENC.

M e m o r a n d u m

To: Brian Will, Planning Department
From: Charles W. Baker, Public Works and Utilities
Subject: Earl's Tavern Pre-Existing Special Permit #31A
Date: May 31, 2005
cc: Randy Hoskins

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the site plan for the 12' x 20' outside smoking and drinking area located in the parking area on the south side of the establishment at 5555 Superior Street (Legal Address 4501 North 56th Street). Public Works has the following comment:

- The parking lot surfacing and layout does not meet design standards.

**LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
INTER-OFFICE COMMUNICATION**

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|---|--|
| TO: Brian Will | DATE: June 1, 2005 |
| DEPARTMENT: Planning | FROM: Chris Schroeder |
| ATTENTION: | DEPARTMENT: Health |
| CARBONS TO: EH File EH Administration | SUBJECT: Earl's Tavern SP #31A |

The Lincoln-Lancaster County Health Department (LLCHD) has reviewed the special permit application with the following noted:

- According to the submitted documentation, the applicant proposes to construct an outdoor smoking area. The LLCHD recommends at least 20% open space relative to the total square footage of the walls and ceiling to ensure adequate ventilation for protecting public health.
- During the construction process, the land owner(s) will be responsible for controlling off-site dust emissions in accordance with Lincoln-Lancaster County Air Pollution Regulations and Standards Article 2 Section 32. Dust control measures shall include, but not limited to application of water to roads, driveways, parking lots on site, site frontage and any adjacent business or residential frontage. Planting and maintenance of ground cover will also be incorporated as necessary.